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U.S. BANKRUPTCY COURT
FILED
CAMDEN, NJ

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JAMES J. WALDRON

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	:	
	:	CHAPTER 11
SHAPES/ ARCH HOLDINGS, LLC, <u>et al.</u> ,	:	
	:	CASE NO. 08-14631 (GMB)
Debtors	:	
	:	Hearing Date:

**DEBTORS' MOTION TO EXTEND ALL SCHEDULING DEADLINES
RELATED TO DEBTORS' OBJECTION TO THE CLAIM OF THE NEW
JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION OR, IN THE
ALTERNATIVE, DEBTORS' MOTION TO COMPEL RESPONSES TO THE
DEBTORS' INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS DIRECTED TO NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

Shapes/Arch Holdings, LLC, et al. ("Debtors") hereby file the Debtors' Motion To Extend All Scheduling Deadlines Related To Debtors' Objection To The Claim Of The New Jersey Department of Environmental Protection Or, In The Alternative, Debtors' Motion To Compel Responses to Debtors' Interrogatories and Requests for Production of Documents and Things directed to the New Jersey Department of Environmental Protection ("NJDEP"). In support of the motion the Debtors submit as follows:

A Hearing on this matter will be held
on 9/29/09 at 10:00am
Mitchell H. Cohen U.S. Courthouse
400 Cooper Street
Camden, NJ 08101
Courtroom 4C

**CERTIFICATION OF SERVICE OF THE
MOTION WITH THIS DATE IS REQUIRED
PRIOR TO THE HEARING DATE OR THE
MOTION WILL BE DENIED.**

1. On July 13, 2009, Debtors served upon the NJDEP, electronically and via first class mail, Debtors' Interrogatories and Requests for Production of Documents and Things directed to NJDEP.¹

2. Pursuant to Rules 9014(c) and 7033 of the Federal Rules of Bankruptcy Procedure and Rule 33(b)(2) of the Federal Rules of Civil Procedure, Debtors' Interrogatories directed to NJDEP were required to be answered by August 12, 2009.

3. Pursuant to Rules 9014(c) and 7034 of the Federal Rules of Bankruptcy Procedure and Rule 34(a)(2)(A) of the Federal Rules of Civil Procedure, Debtors' Requests for Production of Documents and Things directed to NJDEP were required to be answered by August 12, 2009.

4. Pursuant to the agreed upon scheduling Order approved by the Court, all written discovery is to be completed by September 15, 2009.

5. On August 14, 2009, Kevin M. McKenna, Esquire, counsel for Debtors, sent a letter to Richard Engel, Chief Deputy Attorney General for NJDEP, regarding the failure of the NJDEP to provide answers to Debtors' Interrogatories and Requests for Production of Documents and Things. A copy of the August 14, 2009 letter is attached as Exhibit A.

6. On August 18, 2009, the Debtors' counsel called Mr. Engel to discuss the fact that Debtors had not received discovery responses from NJDEP regarding the Debtors' Interrogatories and Requests for Production of Documents and Things directed to NJDEP. Mr. Engel was unavailable.

¹ On July 13, 2009 the Debtors also served Requests for Admission pursuant to Rule 9014 (c) and Rule 7036 of the Federal Rules of Bankruptcy and Rule 36 a (iii) of the Federal Rule of Civil Procedures. Because no responses were timely served, these matters are deemed admitted.

7. On August 19, 2009, Debtors' counsel spoke with Mr. Engel about the overdue discovery responses of the NJDEP. Mr. Engel advised that due to health issues in both his family and in his section at the NJDEP that he would require additional time to respond to Debtors' Interrogatories and Requests for Production of Documents and Things directed to NJDEP. On behalf of the NJDEP Mr. Engel requested that all deadlines be extended by 90 days to give NJDEP time to provide responses to the Debtors Interrogatories and Request for Production of all Documents and Things direct to NJDEP.

8. On August 20, 2009, Debtors' counsel sent a letter to Mr. Engel confirming their telephone conversation. A copy of the August 20, 2009 letter is attached as Exhibit B.

9. On August 21, 2009 Debtors' counsel spoke with Mr. Engel advising him that the Debtors will consent to a 90 day extension of all scheduling deadlines contained in the current Scheduling Order provided that NJDEP serve Debtors with answers and responses to Interrogatories and Request For Production of Documents and Things directed to NJDEP no later than October 1, 2009. A proposed Order is attached.

10. On August 24, 2009, Debtors' counsel sent a letter to Mr. Engel confirming their telephone conversation of August 21, 2009. A copy of the August 24, 2009 letter is attached as Exhibit C.

11. In the alternative, Rules 37(a)(1), 37(a)(3)(B)(iii) and 37(a)(3)(B)(iv) of the Federal Rules of Civil Procedure, made applicable by Rule 7037 of the Federal Rules of Bankruptcy, provide that a party, upon reasonable notice to other parties, may apply for an order compelling discovery. As required under the Federal Rules of Civil Procedure, Debtors are including as Exhibit D, the sworn affidavit of

Kevin McKenna, Esquire, certifying the Debtors' good faith attempts to secure the responses to the discovery requests. An Alternative Proposed Order is also attached.

12. Pursuant to Local Bankruptcy Rule 9013-2, the Debtors assert that no brief is necessary because there are no novel issues of law presented in this motion.

WHEREFORE, the Debtors requests that the Court: (a) enter an Order extending all scheduling deadlines related to Debtors' Objection to the claim of the New Jersey Department of Environmental Protection provided that the NJDEP serve written discovery responses to the Debtors' Interrogatories and Request for Production of Documents by October 1, 2009 or in the alternative, (b) enter an Order compelling NJDEP within ten (10) days to respond to Debtors' Interrogatories and Requests for Production of Documents and Things; and (c) grant such other and further relief as may be just and proper.

Dated: August 27, 2009
Exton, PA

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